

**CALIFORNIA COASTAL COMMISSION**

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Staff: MPD – SF  
Staff Report: August 20, 2004  
Hearing Date: September 8, 2004

**STAFF REPORT – APPEAL  
SUBSTANTIAL ISSUE DETERMINATION**

**APPEAL NO.:** A-2-SMC-04-11

**APPLICANT:** California Department of Transportation  
(Caltrans)

**LOCAL GOVERNMENT:** San Mateo County

**ACTION:** Approval with Conditions

**PROJECT LOCATION:** Highway 1 at Devil's Slide, north of Montara, San  
Mateo County  
APNs 023-731-020, 023-741-010, 023-741-020,  
036-380-060, 036-380-070, 036-380-080, 036-380-  
120

**PROJECT DESCRIPTION:** Inland realignment of Highway 1 and construction  
of a double-bore, 4,000-foot long tunnel with  
approach bridges, an operations and maintenance  
building, and public access improvements

**APPELLANTS:** Oscar Braun for Coastal Family Alliance and Save  
Our Bay Foundation  
Coastal Commissioners Mike Reilly and Meg  
Caldwell

**SUBSTANTIVE FILE  
DOCUMENTS:** Appendix A

**STAFF RECOMMENDATION:** No Substantial Issue

## STAFF NOTE

This staff report addresses only the appeal of the Devil's Slide Tunnel Project that was filed by Oscar Braun for the Coastal Family Alliance and the Save Our Bay Foundation. However, a separate appeal of this project has been filed by Coastal Commissioners Reilly and Caldwell. The Commissioners' appeal solely concerns the status of the inland bypass alignment that, pursuant to the LCP amendment known as Measure T, will no longer be needed to accomplish the realignment of Highway 1. Over the past year, the Commission, State Parks and Caltrans staff have been coordinating to effect the transfer of this land from Caltrans to State Parks, including a pursuit of legislation (SB 792 Sher) that is currently pending approval. Both the Commissioners' decision to appeal the County approval and the staff's recommendation on the Commissioners' appeal may be affected by events that post-date the writing of this report, including whether or not the bill authorizing the land transfer is approved and whether the applicant chooses to waive the time for the Commission to set a hearing on the appeal to a subsequent month. Staff will provide the Commission with its recommendation on any Commissioner appeal still pending prior to the September 8, 2004 hearing or any later hearing agreed to by the applicants.

If the Commissioners withdraw their appeal before a hearing on substantial issue, the staff's recommendation of "No Substantial Issue" on the Coastal Family Alliance and the Save Our Bay Foundation appeal will stand. If the Commission then determines that "No Substantial Issue" exists with respect to the Coastal Family Alliance and Save Our Bay Foundation appeal, the County's approval will be effective and the County, rather than the Commission, will issue the permit.

If the Commissioners do not withdraw their appeal before a hearing on substantial issue, then the staff will recommend substantial issue and, unless the Commission finds "No Substantial Issue" on both the appeal by the Commissioners and the appeal by the Coastal Family Alliance and the Save the Bay Foundation, Section 30625 of the Coastal Act requires that the Commission hold a de novo hearing on the proposed project. In this case, unless the Commission finds no substantial issue on both appeals, the local government's approval will no longer be effective and the Commission will continue its de novo review of the entire project to a subsequent hearing.

With regard to the pending legislation, if the bill is to pass this session, the legislature must vote to approve it before the end of the 2004 legislative session on August 31, and the bill must then be signed by Governor Schwarzenegger.

## EXECUTIVE SUMMARY

The staff recommends that the Commission, after public hearing, determine that the local government's approval of the local coastal development permit for the proposed development raises **no substantial issue** with regards to the conformity of the project approved by the County with either the Local Coastal Program or with the public access policies of the Coastal Act for the following reasons:

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1. Contrary to the requirements of Coastal Act sections 30625 and 30603, the appeal by the Coastal Family Alliance and the Save Our Bay Foundation that was timely filed within the 10-working day appeal period did not include any claim that the local government action is inconsistent with either the certified LCP or the public access policies of the Coastal Act. Therefore, the appeal raises no issues that could justify a decision by the Commission to hear the appeal.
2. The appeal by the Coastal Family Alliance and the Save Our Bay Foundation that was filed within the 10-working day appeal period did not include a statement of facts on which the appeal was based, as is required by Section 13111(a)(8) of Title 14 of the California Code of Regulations.
3. Although the appeal by the Coastal Family Alliance and the Save Our Bay Foundation indicated that the appellants would subsequently provide "written documentation and reason for the appeal," since the appellants had failed to make any allegations within the 10-working day appeal period prescribed by section 30603(c) of the Coastal Act, the documentation filed beyond the 10-working day appeal period does not constitute valid grounds for appeal.
4. Even if timely filed, the supporting documentation that was subsequently provided by the Coastal Family Alliance and the Save Our Bay Foundation after the close of the 10-working day appeal period does not establish any substantial issue with respect to conformity of the approved project with the LCP or the access policies of the Coastal Act. Most problematic, rather than provide the Commission with any specific reasons for appealing the County's action, as required by Coastal Act Coastal Act Sections 30625(b)(1) and 30603 as well as County Zoning Code Section 6328.16(e), the appellants merely provided copies of a collection of news articles and correspondence. Nonetheless, after examining the materials that the appellants submitted, it appears that the appellants' concerns may be liberally construed to fall into eight general arguments that: (1) the project would result in wetland fill in conflict with the wetland protection policies of the LCP; (2) the project would result in impacts to environmentally sensitive habitat areas (ESHA) in conflict with the sensitive habitat protection policies of the LCP; (3) the project is not the least environmentally damaging alternative; (4) the project would provide four highway lanes in conflict with the LCP requirement that Highway 1 remain a scenic two-lane roadway; (5) the project does not comply with the requirements of the National Environmental Policy Act (NEPA) or the California Environmental Quality Act (CEQA); (6) the project is too expensive; (7) the tunnel alternative is less safe than other project alternatives; and (8) various actions by Caltrans and the County concerning the project are in violation of environmental protection and federal anti-racketeering laws.

The first four issues noted above, had they been raised specifically in a timely filed appeal, would potentially be valid grounds for an appeal of the County's action on the coastal development permit for the approved development because they include contentions that the tunnel project is inconsistent with the coastal

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resource protection policies of the County's LCP. However, even assuming these four contentions to be otherwise valid, none of them raise a substantial issue of conformity of the approved development with the County's LCP for the following reasons:

- With respect to the appellants' first two concerns listed above, the San Mateo County LCP, as amended through the Measure T initiative and certified by the Commission, specifically permits the limited and unavoidable wetland fill and ESHA impacts related to the Devil's Slide Tunnel project. As such, the wetland and ESHA impacts resulting from the approved development are allowable under the certified LCP and the appellant's concerns regarding these project impacts do not therefore raise a substantial issue concerning the conformity of the approved development with the County's LCP.
- The appellants' concern that the tunnel is not the least environmentally damaging feasible alternative does not raise a substantial issue because the Commission in its prior actions on the Measure T LCP amendment and the federal consistency certification for the Federal Highway Administration funding approval of the tunnel already determined that the tunnel project is the least environmentally damaging feasible alternative. It was therefore reasonable for the County to rely on the substantial evidence in the record for these prior Commission actions finding that the tunnel is the least environmentally damaging alternative in support of its action to approve the coastal development permit for the tunnel. The appellants' concern appears to be an untimely challenge to these prior Commission actions on the tunnel project rather than of the County's action on the coastal development permit for the tunnel.
- The appellants' concern that the tunnel project would create four lanes in conflict with the two-lane limit contained in the LCP does not raise a substantial issue because the concern is not supported by the evidence in the record, which clearly demonstrates that the approved development would be limited to a single travel lane in each direction.

The appellants' last four concerns noted above, even if they had been raised in a timely filed appeal, do not raise a substantial issue because, contrary to the requirements of Coastal Act sections 30625 and 30603, none of these concerns allege that the approved development does not conform to the standards set forth in the County's LCP or public access policies of the Coastal Act.

5. Finally, the documentation that was subsequently provided by the Coastal Family Alliance and the Save Our Bay Foundation beyond the 10-working day appeal period in fact pre-dated the County's decision and could not, therefore, be reasonably considered to reflect and respond to the County's actual decision.

The Commission's role at the "substantial issue" phase of an appeal of a local government action taken after certification of its local coastal program is to decide

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whether the appeal of the local government action raises a substantial issue as to conformity of the project approved by the County with the applicable Local Coastal Program (LCP) and with the access policies of the Coastal Act. In this case, with respect to the issues contained within the documentation submitted by the appellants beyond the 10-working day appeal period, the local government's findings for the approval of the coastal development permit (Exhibit 18) support its determination that the approved development, as conditioned, does conform to the policies of the County's LCP and the access policies of the Coastal Act. **The motion to carry out the staff recommendation is on Page 5.**

### **1.0 STAFF RECOMMENDATION**

#### **No Substantial Issue**

The staff recommends that the Commission determine that no substantial issue exists with respect to the grounds on which the appeal by Oscar Braun, for the Coastal Family Alliance and the Save Our Bay Foundation, has been filed.

#### **Motion**

*I move that the Commission determine that Appeal No. A-2-SMC-04-011 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

#### **Staff Recommendation of No Substantial Issue**

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

#### **Resolution to Find No Substantial Issue**

The Commission finds that Appeal No. A-2-SMC-04-011 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

### **2.0 PROJECT SETTING AND DESCRIPTION**

#### **2.1 Project Location and Site Description**

The approved project is located between Pacifica and north of Montara in unincorporated San Mateo County (Exhibits 1-2). Proceeding from north to south, from Pacifica, the approved new Highway 1 alignment would depart from the existing Highway 1 along an uphill grade approximately 0.5 kilometer (0.3 mile) south of Linda Mar Boulevard in Pacifica, bridge the valley at Shamrock Ranch on a curve, and enter twin tunnels beneath San Pedro Mountain. The approved alignment would exit the tunnels at a cliff face just south of the Devil's Slide promontory and rejoin the existing highway on a slight downhill grade (Exhibits 3-5).

## **2.2 Project Description**

As approved by the County, Caltrans would construct the Devil's Slide Tunnel project, consisting of realigning approximately 6,500 linear feet of State Route 1 from Devil's Slide to a tunnel underneath San Pedro Mountain, including approaches and bridges outside the tunnel. The approved project would include construction of two parallel tunnels with a length of 4,000 feet, a north portal approach of 1,500 feet that includes parallel bridges measuring 1,050 feet, and a south portal approach of 1,000 feet. Each tunnel would be 30 feet wide and would provide a single traffic lane. Approximately 5,250 feet of the existing Highway 1 alignment would be abandoned as a result of this project and initially turned over to San Mateo County for maintenance and operational responsibilities, after Caltrans constructs parking areas at both ends of the abandoned highway (Exhibits 8-9) and converts this portion into a non-vehicular public trail.

The approved project would generate approximately 610,000 cubic yards of excavated earth. All excess soil would be transported to a fill disposal site located approximately 1,800 feet south of the south portal (Exhibit 11). A Tunnel Operations and Maintenance Center (OMC) would be constructed near the existing highway on a portion of the disposal site (Exhibit 10). The OMC/disposal site would be contour graded and re-vegetated with coastal scrub species (Exhibit 15). Offsite wetland mitigation would occur south of the tunnel, across Highway 1 from the Chart House Restaurant at the north end of Montara (Exhibit 16).

## **2.3 Project History**

Highway 1 at Devil's Slide is geologically unstable. Since the highway was built in 1937, Caltrans has sought various permanent solutions to the problems posed by the slide. Despite drainage improvements, pavement reinforcement and rock anchors, Highway 1 continues to experience difficulties and closures due to landslides and roadway subsidence, causing tremendous inconvenience to coastal residents, severe economic hardships for Coastsides businesses and families, and adverse effects on public access to the many recreation opportunities in the Mid-Coast region of San Mateo County. When Highway 1 is closed, travelers are forced to detour to Highway 92 to reach the coast, and with Highway 92's limited capacity and mountainous terrain, the result is extreme traffic congestion for the entire region. The 1986 Devil's Slide FEIS listed the numerous historic road closures; similar closures have continued to occur since that document was written. One of the longest lasting road closures in the area occurred in 1995, lasted 158 days (from 1/22/95 thru 6/30/95), and cost \$2,983,000 to repair.

In the early 1970's, when NEPA (the National Environmental Policy Act) and CEQA (the California Environmental Quality Act) first became law, the Sierra Club and several other organizations filed a lawsuit over Caltrans' proposal to construct a bypass through McNee Ranch State Park, and the U.S. District Court enjoined further construction pending preparation of an Environmental Impact Report.

The Coastal Commission certified San Mateo County's Local Coastal Program (LCP) in 1981. The LCP recognized the geologic problems at Devil's Slide and provided for a two-lane bypass with uphill passing lanes along a "preferred alignment" called the

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“Martini Creek alignment” (Exhibit 3). The bypass was not a subject of major controversy during the Commission’s public hearings on the LCP. However closures of the existing road continued, with a total of 22 closures occurring between 1973 and 1983. Public sentiment for a solution intensified as a result of 238 days of closure in 1980, and a three-month closure caused by the winter storms of 1982-83.

In response, in 1983 Caltrans resumed preparation of its bypass EIR for a longer alignment than the 4.5-mile long Martini Creek alignment; this alternative was called the “adopted alignment” and was a 6.8-mile long, predominantly four-lane bypass, traversing past Martini Creek through Montara and rejoining Highway 1 near the Half Moon Bay airport. Both the adopted alignment and Martini Creek alignment bisect McNee Ranch State Park, but only the adopted alignment necessitated an LCP amendment. The County submitted to the Coastal Commission LCP amendments to authorize this bypass, but in 1985 the Commission twice denied the proposed LCP amendments (on June 27, 1985, and September 25, 1985).

Caltrans then abandoned the adopted alignment and submitted a consistency certification to the Commission for a 4.5 mile long, three-lane bypass along the Martini Creek alignment (up to 100 ft. wide, with continuous uphill passing lanes in each direction, 30-ft. wide vehicle recovery areas and 49-ft. wide vehicle retention lanes, and with 5.9 million cu. yds of grading). On February 11, 1986, the Commission concurred with Caltrans’ consistency certification for this bypass. However, litigation ensued and controversy remained. As a result, Caltrans never submitted to the County a coastal development permit application for this bypass.

In the winter of 1995-1996, landslide activity again closed the Highway at Devil’s Slide for several months, and public pressure again mounted for a solution to the Devil’s Slide problem. Although it had not been seriously studied previously as a potential feasible solution, at about this time proponents for building a tunnel as a permanent solution to Devil’s Slide presented to County and state officials information supporting the viability of a tunnel. Thus, in 1996, in response to requests from local agencies and the public, Caltrans hired an independent consulting firm to conduct a tunnel feasibility study. Based upon the results of this study (The Devil’s Slide Tunnel Study, Woodward-Clyde Consultants, 1996), the Federal Highway Administration (FHWA) and Caltrans determined that a tunnel alternative would be a reasonable alternative that should be fully evaluated through the environmental impact review process. Caltrans and FHWA determined that a new supplement to the 1986 FEIS was necessary in order to provide new information relevant to the tunnel alternative. On March 19, 1999, the Draft Second Supplemental Environmental Impact Statement (DSSEIS) for the proposed Devil’s Slide Improvement Project was circulated for public review.

On November 5, 1996, the voters of San Mateo County passed the Devil’s Slide Tunnel Initiative known as “Measure T”. Passage of Measure T triggered initiation of the process to amend San Mateo County’s Local Coastal Program (LCP) to provide a tunnel for motorized vehicles behind Devil’s Slide through San Pedro Mountain, and to delete references to a two-lane highway bypass along the Martini Creek alignment. The

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initiative requires that the tunnel be designed consistent with restricting Highway 1 to a two-lane scenic highway using minimum state and federal tunnel standards, and that a separate trail for pedestrians and bicycles be provided outside the tunnel. Measure T also requires voter approval of any other alternative to the tunnel, except repair or reconstruction of the existing highway.

On January 9, 1997, the Commission certified this LCP amendment replacing the Martini Creek alignment with the tunnel, finding the tunnel the least environmentally damaging alternative for providing a permanent solution to the road closure problems at Devil's Slide. In its action certifying the LCP amendment, the Commission determined that the tunnel project presented a conflict between the policies of the Coastal Act that on the one hand promote the protection of public access to the coast, and on the other hand protect wetlands and environmentally sensitive habitat areas (ESHA). In resolving this conflict as provided by Coastal Act Sections 30007.5 and 30200, the Commission concluded that in this specific situation, if conditioned to avoid, minimize and mitigate wetland and ESHA impacts, it would be more protective of coastal resources to approve the project so as to provide safe public access to and along the coast even though it would result in some wetland fill and impacts to environmentally sensitive habitat areas.

On October 10, 2000, the Commission also concurred with Caltrans' consistency certification for the tunnel project. The Commission's findings elaborated that:

*In reviewing Measure T the Commission acknowledged that the wetland fill for the tunnel would not be an allowable use under Section 30233(a) of the Coastal Act. The Commission determined that a conflict existed between competing Coastal Act policies which, on the one hand, promote public access, and which, on the other, seek to prevent or minimize wetland fill and protect wildlife habitat. The Commission noted the "traffic nightmare" that occurs when the existing Highway 1 at Devil's Slide is closed, which greatly impedes the public's ability to achieve access to this coastal area (and also has a severe adverse effect on the heavily tourist-dependent economy of the San Mateo County MidCoastside). The Commission also noted that the previously approved "Martini Creek" Devil's Slide bypass was far more environmentally damaging than the tunnel, not only to wetlands and environmentally sensitive habitat, but to public access and recreation, scenic public views, and the overall character of the San Mateo County Mid-Coastside. That bypass included several orders of magnitude more wetland fill than the proposed tunnel ...; the Commission further noted that:*

*... the tunnel called for by the proposed amendment would have far less impact on the State Park than the Martini Creek Bypass called for by the existing LUP policies to be deleted as part of the amendment. The bypass would bisect the park and would result in significant adverse effects on the quality of recreational experience that can occur in the park.*

Thus, the Commission concluded that any tunnel to be built based on Measure T would be more protective of coastal resources than the Martini Creek bypass alternative. Based on the conflict resolution provision of the Coastal Act (Section 30007.5), the Commission concluded:



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*Based on the information submitted to date, which provides additional alternatives analysis, habitat minimization, monitoring and avoidance measures, as well as other mitigation measures discussed in this report addressing public access and recreation, scenic public views, and water quality, the Commission finds these conclusions remain valid and that, based on Section 30007.5 of the Coastal Act, that it would be most protective of significant coastal resources to allow this project to proceed. The Commission therefore concludes that the project is consistent with the Coastal Act.*

On November 20, 2003, Caltrans applied to San Mateo County for a Coastal Development Permit for the project. On May 26, 2004, the County Planning Commission granted a permit with conditions. On June 3, 2004, the Coastal Family Alliance and Save Our Bay Foundation appealed this permit to the Board of Supervisors, which, as noted below, granted the permit with conditions on July 6, 2004.

### **3.0 APPEAL PROCESS**

#### **3.1 Local Government Action**

On May 26, 2004, the San Mateo County Planning Commission approved with conditions coastal development permit No. PLN 2003-00428 authorizing the Devil's Slide Tunnel project. On June 3, 2004, the Save Our Bay Foundation appealed this permit to the County Board of Supervisors. On July 6, 2004, the Board of Supervisors denied the appeal, upholding the Planning Commission's action in approving the coastal development permit for the tunnel project.

On July 9, 2004, the Commission's North Central Coast District office in San Francisco received the County's Notice of Final Local Action for the County's approval of Local Coastal Development Permit PLN 2003-00428.

#### **3.2 Filing of Appeal**

Oscar Braun, for the Coastal Family Alliance and the Save Our Bay Foundation, and Coastal Commissioners Reilly and Caldwell filed two separate appeals with the Commission in a timely manner on July 23, 2004, within 10-working days of receipt by the Commission on July 9, 2004 of the County's Notice of Final Local Action.

On July 27, 2004, the Commission's North Central Coast District office issued the Executive Director's determination (Exhibit 19), pursuant to Section 30620(d) of the Coastal Act, that the appeal by the Coastal Family Alliance and the Save Our Bay Foundation was patently frivolous, thereby requiring the appellants to submit a filing fee of \$300 if they wished to continue to pursue the appeal. On July 30, 2004, the Commission's North Central Coast District office received the filing fee from Oscar Braun on behalf of the Coastal Family Alliance and the Save Our Bay Foundation.

If the Commission, by a majority vote of Commissioner's present, determines 'that no substantial issue exists with respect to the grounds on which the appeal has been filed pursuant to section 30603,' then the filing fee will not be returned and the Commission

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will not hear the application de novo. (Public Resources Code Section 30625(b)(2); Title 14 CCR section 13115(c)). If, on the other hand, the motion specified in Coastal Act Section 30625(b)(2) fails, then the filing fee will be refunded as required by Section 30620(d) of the Coastal Act and the Commission will hear the appeal as mandated by Section 30625(b).

### **3.3 Appeals Under the Coastal Act**

After certification of Local Coastal Programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff; or in a sensitive coastal resource area or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the "principal permitted use" under the certified LCP. Developments that constitute a major public works or a major energy facility may be appealed, whether they are approved or denied by the local government.

The approved development is located within 300 feet of top of the seaward face of a coastal bluff, within 100 feet of a wetland, is not considered the principle permitted use under the County's certified LCP, and constitutes a major public works project. The approved development thus meets the Commission's appeal criteria in Section 30603 of the Coastal Act. Pursuant to Section 30603 of the Coastal Act, an appeal of this type of approved development is limited to the allegation that the development does not conform to the standards set forth in the certified LCP or the public access policies set forth in the Coastal Act.

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal has been filed. In this case, because the staff is recommending no substantial issue, the Commission will hear arguments and vote on the substantial issue question. Proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons eligible to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted to the Commission or the Executive Director in writing.

It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it determines that the project raises no substantial issue, the Commission will conduct a full de novo public hearing on the merits of the project at the same or subsequent hearing. If the Commission conducts a de novo hearing on the appeal, the

applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program and with the access and recreation policies of the Coastal Act.

### **3.4 Standard of Review**

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

The term *substantial issue* is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Commission Regulations, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. the extent and scope of the development as approved or denied by the local government;
3. the significance of the coastal resources affected by the decision;
4. the precedential value of the local government's decision for future interpretation of its LCP; and
5. whether the appeal raises only local issues, or those of regional or statewide significance.

If the Commission chooses not to hear an appeal, an appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

## **4.0 SUBSTANTIAL ISSUE ANALYSIS**

### **Appellants' Contentions**

#### **4.1 Appellants Coastal Family Alliance and Save Our Bay Foundation, Failed to Allege an Inconsistency of the Approved Project with either the certified LCP or the access policies of the Coastal Act within the 10-working day Appeal Period Prescribed by Coastal Act Section 30603(c)**

Coastal Act (Public Resources Code) Section 30625(b)(2) states that the Commission shall hear an appeal of an action taken by a local government on a coastal development permit application after the certification of the local government's LCP unless it determines "that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to section 30603." Pursuant to section 30603 of the

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Coastal Act, the grounds for an appeal of a local action approving development after certification of the local government's LCP are limited to an allegation that the development does not conform to the certified LCP or the access policies of the Coastal Act. Thus, the Commission's role as an appellate body at this stage is limited to assessing whether the appeal raises a substantial issue with respect to the conformity of the local government's action with the certified LCP and the access policies of the Coastal Act.

Contrary to the requirements of Coastal Act Section 30603(a), the appeal by the Coastal Family Alliance and the Save Our Bay Foundation that was filed within the 10-working day appeal period did not include any claim that the local government action is inconsistent with either the certified LCP or the public access policies of the Coastal Act (Exhibit 17). Therefore, the appeal raises no issues that could justify a decision by the Commission to hear the appeal. In addition, the appeal by the Coastal Family Alliance and the Save Our Bay Foundation that was filed within the 10-working day appeal period did not include a statement of facts on which the appeal was based, as is required by Section 13111(a)(8) of Title 14 of the California Code of Regulations (Exhibit 17).

In fact, the appeal form submitted by the Coastal Family Alliance and the Save Our Bay Foundation on the last day of the prescribed 10-working day appeal period attached no documentation and identified no reasons for the appeal. Instead, the appellants stated they would provide "written documentation and reason for appeal" on a date outside the 10-working day appeal period (Exhibit 17). If the Commission were to allow the appellants to provide for the first time documentation and reasons for appeal on a date beyond the 10 working-day appeal period, the Commission would, in effect, be extending the statutorily prescribed time period for appeal, contrary to the mandate of Section 30603(c) of the Coastal Act. Accordingly, the Commission finds that the appeal that was filed within the 10-working day appeal period raises no substantial issue because: (1) the appeal form submitted failed to allege any grounds for appeal; and (2) the appeal form submitted did not include a statement of facts on which the appeal was based.

Section 30603(c) of the Coastal Act mandates that any local action taken by a local government after certification of an LCP shall become final on the 10<sup>th</sup> working day from the date of receipt by the Commission of the Notice of Final Local Action. Section 30603(c) of the Coastal Act states:

*(c) Any action described in subdivision (a) shall become final at the close of business on the 10th working day from the date of receipt by the commission of the notice of the local government's final action, unless an appeal is submitted within that time. Regardless of whether an appeal is submitted, the local government's action shall become final if an appeal fee is imposed pursuant to subdivision (d) of Section 30620 and is not deposited with the commission within the time prescribed.*

Due to the appellants' failure to make the allegations prescribed by Coastal Act section 30603(a) within the 10-working day appeal period prescribed by Section 30603(c), along

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with its failure to provide any evidence or facts to support its appeal within the 10-working day appeal period, the appeal raises no issues that could justify a decision by the Commission to hear the appeal.

### **4.2 Even if the Documentation Submitted Beyond the 10-working day Appeal Period by Appellants' Coastal Family Alliance and Save Our Bay Foundation Had Been Timely Submitted, such Documentation still Raises No Substantial Issue of Conformity of the Approved Project with Either the Certified LCP or the Access Policies of the Coastal Act.**

As stated above, the appeal form submitted by the Coastal Family Alliance and the Save Our Bay Foundation did not include any allegations that the approved project was inconsistent with the LCP or the access policies of the Coastal Act (Exhibit 17). Instead, on July 28, 2004, five days after closure of the 10-working day appeal period, the appellants submitted a collection of newspaper articles, correspondence dating back to 1973. Most of these documents concern the Devil's Slide project, though it is unclear how some of these documents relate to the project. Although some of these documents do raise issues concerning the conformity of the tunnel project with the County's LCP, because they were not included in a timely filed appeal, they cannot be considered as valid grounds for appeal in accordance with the 10-working day appeal deadline established by Coastal Act Section 30603(c).

Moreover, even if the documentation submitted by the appellants beyond the 10-working day appeal period had been timely submitted, the appeal does not raise a substantial issue as to the approved project's conformity with the LCP or the public access policies of the Coastal Act. The Commission notes that rather than provide the Commission with a specific explanation of its reasons for appeal, these documents include a collection of news articles and correspondence written over the years by a number of parties (Exhibit 21). Contained within this documentation are scattered statements opposing the project at its various stages. This documentation provided by the appellants beyond the 10-working day appeal period is all material that predates the County's action on the coastal development permit on July 6, 2004, and could not, therefore, be reasonably considered to reflect and respond to the County's actual decision.

For the reasons stated below, the Commission finds that even if timely filed, the supporting documentation that was subsequently provided by the Coastal Family Alliance and the Save Our Bay Foundation after the close of the 10-working day appeal period does not establish any substantial issue with respect to conformity of the approved project with the LCP or the access policies of the Coastal Act.

After examining the materials that the appellants submitted, it appears that the appellants' concerns, if liberally construed, fall into eight general arguments that: (1) the project would result in wetland fill in conflict with the wetland protection policies of the LCP; (2) the project would result in impacts to environmentally sensitive habitat areas (ESHA) in conflict with the sensitive habitat protection policies of the LCP; (3) the project is not the least environmentally damaging alternative; (4) the project would provide four highway lanes in conflict with the LCP requirement that Highway 1 remain a scenic two-

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lane roadway; (5) the project does not comply with the requirements of the National Environmental Policy Act (NEPA) or the California Environmental Quality Act (CEQA); (6) the project is too expensive; (7) the tunnel alternative is less safe than other project alternatives; and (8) various actions by Caltrans and the County concerning the project are in violation of environmental protection and federal anti-racketeering laws.

The first four issues noted above, had they been raised specifically in a timely filed appeal, would potentially be valid grounds for an appeal of the County's action on the coastal development permit for the approved development because they include contentions that the tunnel project is inconsistent with the coastal resource protection policies of the County's LCP. However, even assuming these four contentions to be otherwise valid, none of them raise a substantial issue of conformity of the approved development with the County's LCP for the following reasons:

### 4.2.1 Wetlands

The approved development would result in 42,250 square feet of wetland fill (Exhibits 11-12). As the County noted in its findings for the approved coastal development permit, Caltrans proposes to mitigate wetland impacts at a 4:1 ratio. The County further noted that:

*Due to the steep topography of the project site, full on-site mitigation at this level is not feasible. The applicant proposes to provide on-site mitigation where practicable and feasible. In addition, the applicant has proposed restoring and creating new wetland areas on a parcel just north of Montara and across from the former Charthouse Restaurant (Attachment K [Exhibit 16]).*

Some of the documents submitted by the appellants on July 28, 2004 raise concerns that the tunnel project is inconsistent with the wetland protection policies of the San Mateo County LCP and the Coastal Act.

Although the LCP prohibits most types of development from being located in or within 100 feet of wetlands, as amended through the Measure T initiative and certified by the Commission, the County's LCP specifically permits the limited and unavoidable wetland impacts related to the Devil's Slide Tunnel project. At the time that the provisions of Measure T were incorporated into the certified LCP in 1996-1997, the Commission determined that the tunnel project presented a conflict between the coastal access and wetland protection policies of the Coastal Act. In resolving this conflict as provided by Coastal Act Sections 30007.5 and 30200, the Commission found that, if conditioned to avoid, minimize and mitigate wetland impacts, approval of the tunnel project would, on balance, be more protective of coastal resources.

In its subsequent consistency certification action (CC-94-00), the Commission summarized the action the Commission had taken in certifying the LCP amendment incorporating the provisions of Measure T into the certified LCP as follows:

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*On November 5, 1996, the voters of San Mateo County passed the Devil's Slide Tunnel Initiative known as Measure T. Passage of Measure T triggered initiation of the process to amend San Mateo County's Local Coastal Plan (LCP) to provide a tunnel for motorized vehicles behind Devil's Slide through San Pedro Mountain, and to delete references to a two-lane highway bypass along the Martini Creek alignment. The Initiative requires that the tunnel be designed consistent with restricting Highway 1 to a two-lane scenic highway using minimum state and federal tunnel standards, and that a separate trail for pedestrians and bicycles be provided outside the tunnel. Measure T also requires voter approval of any other alternative to the tunnel, except repair or reconstruction of the existing highway.*

*On January 9, 1997, the Commission certified this LCP amendment, finding the tunnel the least environmentally damaging alternative for providing a permanent solution to the road closure problems at Devil's Slide, and finding that while the project did not qualify as an allowable use pursuant to Section 30233(a), the project presented a conflict between Coastal Act policies addressing, on the one hand, protection of wetland resources, and, on the other, promotion of public access. Under Section 30007.5 (the conflict resolution section of the Coastal Act), the Commission concluded that it would be more protective of coastal resources to resolve this conflict by approving the project and allowing wetland fill and encroachment near environmentally sensitive habitat areas (with avoidance and mitigation measures).*

As the County noted, the project was originally proposed with a fill embankment at the north portal across the Shamrock Ranch valley and filling the entire north pond at Shamrock Ranch, and, at the south portal, which would have had substantial impacts upon the riparian and wetland resources in this area. Additionally, the original plans called for the filling in of the seasonal ponding depression at the fill disposal site and elimination of both wetland areas around the South Portal. Working with the County and Coastal Commission staff, Caltrans reduced the extent of wetland fill and made several impact-reducing design changes, including: (1) constructing a bridge across the valley at the west end of Shamrock Ranch (protecting wetlands and ESHA/California red-legged frog habitat); (2) modified the design of the fill slope at the fill disposal site (south of the south portal) to avoid filling the uphill ponding depression at this location; (3) further reducing wetland and riparian impacts by relocating access into the OMC site from the north to the south, pushing the OMC building further east, limiting grading, and installing retaining walls; (4) reducing wetland impacts at Shamrock Ranch by realigning construction access roads throughout the property to avoid wetland areas and narrowing the roadway prism in spots that traversed wetlands to minimize impacts (through use of temporary retaining walls); (5) replacing a proposed water quality measure (installation of a bio-swale at Shamrock Ranch, which would have involved small impacts to wetlands) with a water quality basin that avoids wetland impacts; (6) eliminating wetland impacts at the south portal through redesigning the northbound approach to the south portal; (7) replacing originally proposed roadway drainage improvements and a maintenance access area at the north end of the soil nail walls, which would have

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involved fill of a seasonal wetland, with a drainage plan designed to allow runoff from above the walls to sheet flow over the face of the soil nail wall; and (9) redesigning the rock cut at the south portal to avoid wetland fill and replace fill with a retaining wall.

In addition, the County's conditions of approval require submittal of a final wetland mitigation plan for review and approval by the County Planning Division, in consultation with the Coastal Commission, for the "Charthouse mitigation site," with such plan to include: (1) mitigation goals, objectives and performance standards; (2) an ecological assessment of the existing habitat, functions and values of the mitigation sites; (3) specific designs for hydrology, soil, ground elevations, buffer areas, vegetation composition; (4) plans for removal of exotics; (5) a contingency plan to be implemented if success criteria or mitigation performance standards are not achieved; (6) long term maintenance; (7) monitoring; (8) an implementation schedule; and (9) conservation easements for all wetland mitigation areas (three on site and one at the Chighthouse site) for habitat restoration, habitat maintenance, open space, view preservation and habitat protection.

Because, the approved tunnel has been designed and conditioned to avoid, minimize and mitigate wetland impacts to the maximum extent feasible consistent with the requirements of Measure T LCP and the Commission's action certifying the Measure T LCP amendment, the wetland impacts resulting from the approved development are allowable under the certified LCP and the appellant's concerns regarding these project impacts do not therefore raise a substantial issue concerning the conformity of the approved development with the County's LCP.

### **4.2.2 ESHA**

The approved development would result in unavoidable impacts to California red-legged frog habitat, which is considered a sensitive habitat (ESHA) under the County's LCP. Some of the documents submitted by the appellants on July 28, 2004, raise concerns that the approved development is therefore inconsistent with the sensitive habitat protection policies of the LCP.

At the time that the provisions of Measure T were incorporated into the certified LCP in 1996-1997, the Commission determined that the tunnel project presented a conflict between the coastal access and ESHA policies of the Coastal Act. In resolving this conflict as provided by Coastal Act Sections 30007.5 and 30200, the Commission found that, if conditioned to avoid, minimize and mitigate ESHA impacts, approval of the tunnel project would, on balance, be more protective of coastal resources.

As the County noted, the project was originally proposed with a fill embankment at the north portal across the Shamrock Ranch valley and filling the entire north pond at Shamrock Ranch, and, at the south portal, which in addition to filling wetlands as discussed above, would have also destroyed environmentally sensitive California red-legged frog habitat. Also as discussed above Caltrans agreed to bridge rather than fill the north pond and to include a number of measures, in consultation with the U.S. Fish and Wildlife Service (USFWS), to identify, protect, and minimize impacts to ESHA at all work areas.



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Of particular concern is California-red legged frog habitat. The areas where the frog exists (identified in detailed maps contained in the County's file [Attachments 3-B1 through 3-B11 of plans dated November 20, 2003]) will be delineated and marked with high visibility, frog-proof fencing, silt fencing, and sturdy perimeter barriers. No construction activity or movement through these ESHAs will be allowed. Vegetation removal for this project will be limited to those areas that will be disturbed by construction activities.

Caltrans has also committed to the measures contained in the Biological Opinion issued by the USFWS, dated December 2000 and revised by letter from the USFWS dated March 25, 2004. The measures include relocating red-legged frog from the north pond (Shamrock Ranch) to minimize incidental take during construction, creation of a pond on the Shamrock Ranch property, where new permanent habitat for the red-legged frog was established. The purpose of the pond was to provide additional habitat for frogs that would be relocated from the northern pond during construction, and as mitigation for potential indirect impacts resulting from the project. The USFWS endorsed the proposed pond creation and, in 2000, Caltrans constructed the new pond. In April and July 2001, with approval from the USFWS, frogs were trapped at the north pond and relocated to the new pond. In addition to providing new California red-legged frog habitat, this pond also created 0.04 acres of wetlands.

Additional mitigation measures based on the biological opinion include: (1) frog exclusion fencing (including one-way funnels that allow frogs that might be in the adjacent construction areas to "escape" to non-construction areas); (2) sediment barrier fencing; (3) restoration of temporarily disturbed areas; (4) redirection of runoff from the bridges to a water quality basin and which does not drain to the ponds and their surrounding habitats; (5) post-project completion, a one-time, silt removal project will be implemented at the north pond in order to lessen the current heavy silt load in this basin (with the frogs temporarily relocated, to the degree possible, during this operation); (6) permanent protection for the north pond, including a permanent water supply and planting of a complex of indigenous emergent reed, sedge, and forbs species, in order to assist continued larval metamorphosis, even during drought years; (7) a three-year monitoring plan for California red-legged frog impacts and recovery; (8) removal of the koi carp population from the south pond (at the North Portal work site) to eliminate predation on red-legged frog eggs and tadpoles; (9) restoration of the now-disturbed north face of the south pond dam (at the North Portal work site); (10) regular inspections of the fence around the construction access road and the north pond to ensure that red-legged frogs do not cross the road and enter the north pond; (11) installation of an electric fence around the new pond fence to prevent mammalian predation; and (12) development of a monitoring plan for the Peregrine falcon nesting site adjacent to the South Portal work area, including suspension of construction if monitoring establishes that project activities are interrupting egg incubation or the feeding of the chicks at the peregrine falcon nest(s).

Thus, because, consistent with the provisions of Measure T the approved tunnel has been conditioned to avoid, minimize and mitigate ESHA impacts to the maximum extent

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feasible, the ESHA impacts resulting from the approved development are specifically allowed under the certified LCP. Therefore, the appellant's concerns regarding the impacts of the approved development to ESHA do not raise a substantial issue concerning the conformity of the approved development with the certified LCP.

### 4.2.3 Bolsa Chica Decision

The appellants rely on the compilation of news articles and correspondence to argue that the *Bolsa Chica* decision (*Bolsa Chica Land Trust v. Superior Court of San Diego*, 71 Cal.App.4<sup>th</sup> 493) does not allow the Commission to rely on the "conflict resolution test" of Section 30007.5 to allow the unavoidable wetland and ESHA impacts resulting from the Devil's Slide Tunnel project. However, the *Bolsa Chica* decision did not reach that conclusion. In the *Bolsa Chica* case, the Court held that the approval by the Commission of an LCP that allowed residential development of a eucalyptus grove identified as ESHA was not justifiable under the Coastal Act as a resolution of a conflict between competing policies of the Coastal Act because neither the Commission nor the Court could identify a conflict between two Coastal Act policies. Neither the Commission nor the Court could identify a conflict between two Coastal Act policies because there are no Coastal Act policies that mandate the provision of residential housing.

In contrast, before and after the *Bolsa Chica* decision, the Commission has in limited situations authorized certain projects involving conflicts with wetland and ESHA protection policies; the Commission has done so, however, only when it has found that a conflict exists between Coastal Act policies and when such conflict was "... resolved in a manner which on balance is the most protective of significant coastal resources."

For example, in reviewing CC-64-99 (San Diego Metropolitan Transit Development Board, mid-coast light-rail extension, San Diego) the Commission considered the *Bolsa Chica* decision and found:

*The project creates a conflict between the access and water quality policies of the CCMP on the one hand and wetland policies on the other. If the proposed project is denied based on wetland policy requirements, the existing and future access and water quality impacts from traffic congestion would not be reduced. The increased traffic problems will result in the continued deterioration of these resources. Therefore, the project results in a conflict among Coastal Act policies. The access and water quality benefits from this project are significant and the project benefits other coastal resources and issues because it is an extension of a mass transit facility that will improve air quality and reduce energy consumption. The wetland impacts are not significant for two reasons. First, the amount of wetland fill is small, 0.007 acre (304.92 square feet). Second, the impact to the resource is not significant because it is degraded, affected by urban encroachment, and does not support any endangered, threatened, or special status species. Therefore, concurrence with this consistency certification is on balance most protective of coastal resources.*

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In CC-29-02 (North County Transit District, Oceanside-Escondido Rail Project), the Commission similarly found:

*The project creates a conflict between the access and water quality policies of the CCMP on the one hand and wetland policies on the other. If the proposed project were denied based on wetland policy requirements, the existing and future access and water quality impacts from traffic congestion would not be reduced. The increased traffic problems will result in the continued deterioration of these resources. Therefore, the project results in a conflict among Coastal Act policies. The access and water quality benefits from this project are significant and the project benefits other coastal resources and issues because it is an extension of a mass transit facility that will improve air quality and reduce energy consumption. The wetland impacts are not significant for two reasons. First, the amount of wetland fill is small, 0.275 acre (11,979 square feet). Second, the impact to the resource is not significant because it is disturbed and has low habitat value, is affected by urban encroachment, and does not support any endangered, threatened, or special status species. Therefore, pursuant to Section 30007.5, concurrence with this consistency certification is on balance most protective of coastal resources.*

Although the appellants are correct in stating the *Bolsa Chica* decision determined that “the power to balance and compromise (Section 30007.5) cannot be found in Section 30240,” the appellants misinterpret that decision when they extrapolate from it that the power to resolve a conflict under Section 30007.5 of the Coastal Act is not available. As stated above, one reason the subject tunnel case differs from the circumstances in the *Bolsa Chica* decision is that unlike the LCP amendment incorporating the provisions of Measure T, the Commission did not and could not find in the *Bolsa Chica* case that a conflict existed between two Coastal Act policies. Therefore the Commission did not rely on Section 30007.5 to resolve a conflict in the *Bolsa Chica* matter. Thus, because the proposed fill of wetlands in the *Bolsa Chica* matter was not an allowable use under Sections 30233(a) and Section 30240, it could not be found consistent with the Coastal Act. The appellants’ assertion that the *Bolsa Chica* decision does not allow the Commission to rely on Section 30007.5 when a legitimate conflict does exist however (which the Commission has now repeatedly found exists for the Devil’s Slide tunnel project) is an inappropriate extrapolation of the *Bolsa Chica* decision and, as evidenced above, is refuted by Coastal Commission decisions and findings adopted since the *Bolsa Chica* decision was issued.

Further, the concerns raised by the appellants are issues that were resolved when the Commission and the County certified Measure T into the LCP in 1996-1997. By rechallenging these issues in the County’s approval of the coastal development permit, the appellants are in effect challenging the provisions of the LCP that were certified over eight years ago rather than raising the statutorily required grounds for appeal of a local coastal development permit regarding whether the local approval of the coastal development permit is consistent with the certified LCP as is required by Coastal Act Section 30603.

#### **4.2.4 Alternatives Analysis**

Some of the news articles and correspondence submitted by the appellants after the 10-working day appeal period raise concerns that the tunnel project is not the least environmentally damaging feasible alternative.

In 1997, the Commission certified the Measure T LCP amendment, which included amending LUP Policy 2.54(b) to state:

*For Route 1, allow construction of a tunnel behind Devil's Slide through San Pedro Mountain. The tunnel should be given high priority for federal and State highway funds. Until a tunnel is completed, the State should maintain and repair the road on the existing alignment. No part of Route 1 used by motor vehicles shall be built on any alignment that bisects Montara State Beach, including the "McNee Ranch Acquisition" except along the current Route 1 alignment. Any alternative to the tunnel, except the repair and reconstruction of the existing road, shall require approval by a majority of the voters of San Mateo.*

[Emphasis added.]

In certifying this amendment to the County's LCP, the Commission evaluated the three principal alternatives to the Devil's Slide Tunnel project: (1) the inland bypass alternative, which would relocate the highway inland of the slide through the McNee Ranch acquisition of Montara State Beach known as the Martini Creek alignment; (2) the marine disposal alternative, which would maintain the highway in its current alignment by buttressing the bluff with a massive fill in the ocean of material excavated from San Pedro Mountain above Devil's Slide; and (3) the "no project" alternative. After considering each of these alternatives, the Commission determined that the tunnel alternative represents the least environmentally damaging feasible alternative.

The Commission finds that it was reasonable for the County to rely on the Commission's findings for the certification of the Measure T LCP amendment in concluding that the tunnel project is the least environmentally damaging alternative. Furthermore, as amended through Measure T, the LCP prohibits the County from approving a coastal development permit for any alternative to the tunnel without voter approval. Therefore, the Commission finds that the appellants' concerns regarding project alternatives raises no substantial issue of conformity of the approved development with the certified LCP.

#### **4.2.5 Number of Lanes**

With respect to the appellant's concern that the project is in essence a four-lane road and, therefore, inconsistent with the requirement of County LUP Policy 2.50.b that "The tunnel design shall be consistent with (a) Coastal Act [Section 30254] limits restricting Route 1 to a two-lane scenic highway...", this assertion is simply inaccurate. It appears that the appellants' concern may be that the total 30-foot width of each of the approved twin bore tunnels could provide for two travel lanes within each tunnel. However, the project description and plans, and the engineering and design specifications for the project all clearly show that the approved tunnels would provide: one 3.6-meter (11.8-foot) travel lane; one 0.6-meter (2-foot) shoulder; one 2.4-meter (7.9-foot) shoulder; and two 1.2-meter (3.9-foot) sidewalks. Consistent with Measure T, which the Commission

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has already found consistent with Coastal Act Section 30254 (see p. 13, Commission findings, San Mateo County LCP Amendment No. 1-96), wide shoulders are permitted within the tunnels to allow passage for emergency vehicle. Moreover, the North Portal approach bridges are narrower than the tunnels, each providing one 3.6-meter (11.8-foot) travel lane, one 2.4-meter (7.9-foot) shoulder, and one 1.8-meter (5.9-foot) bicycle lane.

Therefore, the Commission finds that the appellants' concerns that the tunnel would provide four travel lanes raises no substantial issue of conformity of the approved development with the certified LCP.

### **4.2.6 Invalid Grounds for Appeal of Coastal Development Permit**

The appellants' concerns that: (1) the project does not comply with the requirements of the National Environmental Policy Act (NEPA) or the California Environmental Quality Act (CEQA); (2) the project is too expensive; (3) the tunnel alternative is less safe than other project alternatives; and (4) various actions by Caltrans and the County concerning the project are in violation of environmental protection and federal anti-racketeering laws, even if they had been raised in a timely filed appeal, do not raise a substantial issue because, contrary to the requirements of sections 30625(b)(1) and 30603 of the Coastal Act, none of these concerns allege that the approved development does not conform to the standards set forth in the County's LCP or public access policies of the Coastal Act.

### **4.3 Conclusion**

The Commission finds that with respect to the issues raised by appellants, it was reasonable for the County to conclude that the approved project is consistent with the County's LCP based on the avoidance, minimization, and mitigation measures incorporated into the final design of the project and as required by the County's conditions of approval for the coastal development permit, combined with the language of Measure T and the supporting Coastal Commission LCP amendment and consistency certification findings.

Other factors amplify how the Coastal Family Alliance and Save Our Bay Foundation's appeal raises "No Substantial Issue" with respect to the conformity of the approved project with the County's LCP and with the access policies of the Coastal Act.

With respect to the issues contained within the documentation submitted by the appellants beyond the 10-working day appeal period and the degree of factual and legal support for the local government's decision, the County's findings and conclusions (Exhibit 18) are amply supported by substantial evidence. The County found the proposed project, as conditioned, to be consistent with the applicable policies and building standards set forth by the certified San Mateo County LCP. The County's approval includes 48 special conditions and specifically reviews the project against the applicable LCP provisions for each coastal resource that would be impacted by the project. The approved project is supported by intensive environmental analysis (including Environmental Impact Reports, Statements, and Supplements), an approved ballot initiative, many public hearings, several votes at distinct project stages (including

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LCP amendment, consistency certification, and coastal development permit) by the County and the Coastal Commission. With respect to the issues contained within the documentation submitted by the appellants beyond the 10-working day appeal period, the County findings also discuss that with the conditions imposed by the County, all feasible wetland and ESHA impact avoidance measures have been taken, unavoidable impacts will be mitigated to the maximum extent feasible, and, that therefore, the tunnel project represents the least environmentally damaging feasible alternative.

With respect to the issues contained within the documentation submitted by the appellants beyond the 10-working day appeal period and the precedential value of the local government's decision for future interpretations of its LCP, because the County's LCP has been amended to specifically contemplate and authorize this project, the project does not raise any concerns regarding the precedential value of the local government's decision for future interpretations of its LCP.

Therefore, even with regard to the untimely concerns submitted by Coastal Family Alliance and Save Our Bay Foundation beyond the 10-working day appeal period, the Commission finds that Coastal Family Alliance and Save Our Bay Foundation's appeal of the County's action does not raise any substantial issues of conformity of the approved project with either the LCP policies or the public access policies of the Coastal Act.

### **APPENDICES**

- A. Substantive File Documents
- B. Cited San Mateo County LCP Policies

### **EXHIBITS**

- 1-2. Project Location
- 3. Tunnel Alignment and former Inland Bypass alignment
- 4. Tunnel and OMC Building Locations
- 5. Tunnel Profile under San Pedro Mountain
- 6. Tunnel/Bridge Cross Sections
- 7. Bridges
- 8. North Cul-de-sac
- 9. South Cul-de-sac
- 10. OMC Building
- 11. Fill Disposal Site
- 12. North Portal
- 13. South Portal
- 14. North Portal Revegetation Plan
- 15. South Portal Revegetation Plan
- 16. Offsite Wetland Mitigation Site
- 17. Appellant's (Coastal Family Alliance's and Save Our Bay Foundation's) Appeal Form Submitted within the 10-working day appeal period
- 18. San Mateo County Findings and Conditions

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19. Executive Director's letter of July 27, 2004 ("patently frivolous" determination)
20. San Mateo County Counsel Letter of January 25, 2001
21. Appellant's (Coastal Family Alliance's and Save Our Bay Foundation's) material submitted after closure of the 10-working day appeal period
22. Additional Correspondence
23. Measure T

**APPENDIX A**

**SUBSTANTIVE FILE DOCUMENTS:**

1. San Mateo County File Number: PLN 2003-00428 (Caltrans, Devil's Slide Tunnel)
2. Consistency Certification No. CC-94-00 (Caltrans, Devil's Slide Tunnel)
3. San Mateo County LCP Amendment No. 1-96, ("Measure T," the Devil's Slide Tunnel Initiative).
4. 1986 Environmental Impact Statement/Environmental Impact Report.
5. Draft Supplemental Environmental Impact Statement (DSSEIS) for the proposed Devil's Slide Improvement Project, March 19, 1995.
6. Draft Second Supplemental Environmental Impact Statement (DSSEIS) for the proposed Devil's Slide Improvement Project, March 1999.
7. Federal Highway Administration issued a Record of Decision on this document on September 13, 2002.
8. The Devil's Slide Tunnel Study, Woodward-Clyde Consultants, 1996.
9. Addendum to the Devil's Slide Dewatering Feasibility Study, Caltrans, June 2000.
10. Preliminary Coastal Zone Wetland Delineation, State Route 1 Devil's Slide Bypass Project, Caltrans, June 15, 2000.
11. San Mateo County LCP Amendments No. 1-85 and 2-85, Devil's Slide bypass (adopted alignment bypass).
12. Consistency Certification CC-45-85, Caltrans, Devil's Slide bypass (Martini Creek bypass).
13. Consistency Certification CC-64-99, San Diego Metropolitan Transit Development Board, mid-coast light-rail extension, San Diego.
14. Consistency Certification CC-29-02, North County Transit District, Oceanside-Escondido Rail Project.



## **APPENDIX B**

### **SAN MATEO COUNTY LCP LAND USE PLAN POLICIES**

#### **2. 50 Route 1 and Route 92 Phase I Capacity Limits**

- a. On Route 92, limit Phase I improvements to: (1) slow vehicle lanes on uphill grades, and (2) the following operational and safety improvements within the existing alignment or lands immediately adjacent: elimination of sharp curves, lane widening, wider shoulders to allow passage for emergency vehicles and signals at major intersections.
- b. On Route 1, limit Phase I improvements to: (1) slow vehicle lanes on uphill grades and the following operational and safety improvements within the existing alignment or lands immediately adjacent: elimination of sharp curves, lane widening, wider shoulders to allow passage for emergency vehicles and signals at major intersections; and (2) construction of a tunnel for motorized vehicles only behind Devil's Slide through San Pedro Mountain. The tunnel design shall be consistent with (a) Coastal Act limits restricting Route 1 to a two-lane scenic highway, and (b) minimum State and federal tunnel standards. A separate trail for pedestrians and bicycles shall be provided outside the tunnel as specified in Policy 2. 56a.

#### **2. 54 Roadway Alignments**

- a. For Routes 92 and 84, use the existing alignment when increasing roadway capacity, unless it can be proven physically and economically infeasible, or if use of the existing alignment would be environmentally more damaging than an alternative route.
- b. For Route 1, allow construction of a tunnel behind Devil's Slide through San Pedro Mountain. The tunnel should be given high priority for federal and State highway funds. Until a tunnel is completed, the State should maintain and repair the road on the existing alignment. No part of Route 1 used by motor vehicles shall be built on any alignment that bisects Montara State Beach, including the "McNee Ranch Acquisition" except along the current Route 1 alignment. Any alternative to the tunnel, except the repair and reconstruction of the existing road, shall require approval by a majority of the voters of San Mateo.
- c. Require that the roadway improvements be consistent with policies of the Local Coastal Program, particularly the Sensitive Habitats and Agriculture Components.

**2. 56 Improvements for Bicycle and Pedestrian Trails**

- a. Require, if funds are available, that CalTrans provide adjacent or separate facilities for bicycle and pedestrian trails in accordance with the policies of the Recreation and Visitor-Serving Facilities Component and the County Bikeways Plan. If a tunnel is constructed behind Devil's Slide, require as part of the project that CalTrans construct a bicycle and pedestrian trail outside the tunnel.
- b. Require, as a minimum, that CalTrans provide adequate right-of-way on new or expanded roadways to allow the future development of bicycle and pedestrian trails in accordance with the policies of the Recreation and Visitor-Servicing Facilities Component and the County Bikeways Plan.

**\*7. 1 Definition of Sensitive Habitats**

Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water-associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes. Sensitive habitat areas include, but are not limited to, riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered, and unique species.

**7. 2 Designation of Sensitive Habitats**

Designate sensitive habitats as including, but not limited to, those shown on the Sensitive Habitats Map for the Coastal Zone.

**\*7. 3 Protection of Sensitive Habitats**

- a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.
- b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

**\*7. 4 Permitted Uses in Sensitive Habitats**

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- a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs and habitats supporting rare, endangered, and unique species shall be the uses permitted in Policies 7. 9, 7. 16, 7. 23, 7. 26, 7. 30, 7. 33, and 7. 44, respectively, of the County Local Coastal Program on March 25, 1986.
- b. In sensitive habitats, require that all permitted uses comply with U. S. Fish and Wildlife and State Department of Fish and Game regulations.

### **7. 5 Permit Conditions**

- a. As part of the development review process, require the applicant to demonstrate that there will be no significant impact on sensitive habitats. When it is determined that significant impacts may occur, require the applicant to provide a report prepared by a qualified professional which provides: (1) mitigation measures which protect resources and comply with the policies of the Shoreline Access, Recreation/Visitor-Serving Facilities and Sensitive Habitats Components, and (2) a program for monitoring and evaluating the effectiveness of mitigation measures. Develop an appropriate program to inspect the adequacy of the applicant's mitigation measures.
- b. When applicable, require as a condition of permit approval the restoration of damaged habitat(s) when in the judgment of the Planning Director restoration is partially or wholly feasible.

### **7. 6 Allocation of Public Funds**

In setting priorities for allocating limited local, State, or federal public funds for preservation or restoration, use the following criteria: (1) biological and scientific significance of the habitat, (2) degree of endangerment from development or other activities, and (3) accessibility for educational and scientific uses and vulnerability to overuse.

### **7. 7 Definition of Riparian Corridors**

Define riparian corridors by the "limit of riparian vegetation" (i. e. , a line determined by the association of plant and animal species normally found near streams, lakes and other bodies of freshwater: red alder, jaumea, pickleweed, big leaf maple, narrow-leaf cattail, arroyo willow, broadleaf cattail, horsetail, creek dogwood, black cottonwood, and box elder). Such a corridor must contain at least a 50% cover of some combination of the plants listed.

### **7. 8 Designation of Riparian Corridors**

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Establish riparian corridors for all perennial and intermittent streams and lakes and other bodies of freshwater in the Coastal Zone. Designate those corridors shown on the Sensitive Habitats Map and any other riparian area meeting the definition of Policy 7. 7 as sensitive habitats requiring protection, except for manmade irrigation ponds over 2,500 sq. ft. surface area.

### **7. 9 Permitted Uses in Riparian Corridors**

- a. Within corridors, permit only the following uses: (1) education and research, (2) consumptive uses as provided for in the Fish and Game Code and Title 14 of the California Administrative Code, (3) fish and wildlife management activities, (4) trails and scenic overlooks on public land(s), and (5) necessary water supply projects.
- b. When no feasible or practicable alternative exists, permit the following uses: (1) stream dependent aquaculture, provided that non-stream dependent facilities locate outside of corridor, (2) flood control projects, including selective removal of riparian vegetation, where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, (3) bridges when supports are not in significant conflict with corridor resources, (4) pipelines, (5) repair or maintenance of roadways or road crossings, (6) logging operations which are limited to temporary skid trails, stream crossings, roads and landings in accordance with State and County timber harvesting regulations, and (7) agricultural uses, provided no existing riparian vegetation is removed, and no soil is allowed to enter stream channels.

### **7. 11 Establishment of Buffer Zones**

- a. On both sides of riparian corridors, from the "limit of riparian vegetation" extend buffer zones 50 feet outward for perennial streams and 30 feet outward for intermittent streams.
- b. Where no riparian vegetation exists along both sides of riparian corridors, extend buffer zones 50 feet from the predictable high water point for perennial streams and 30 feet from the midpoint of intermittent streams.
- c. Along lakes, ponds, and other wet areas, extend buffer zones 100 feet from the high water point except for manmade ponds and reservoirs used for agricultural purposes for which no buffer zone is designated.

### **7. 14 Definition of Wetland**

Define wetland as an area where the water table is at, near, or above the land

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surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes, and swamps. Such wetlands can be either fresh or saltwater, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds, and manmade impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.

In San Mateo County, wetlands typically contain the following plants: cordgrass, pickleweed, jaumea, frankenia, marsh mint, tule, bullrush, narrow-leaf cattail, broadleaf cattail, pacific silverweed, salt rush, and bog rush. To qualify, a wetland must contain at least a 50% cover of some combination of these plants, unless it is a mudflat.

### **7. 15 Designation of Wetlands**

- a. Designate the following as wetlands requiring protection: Pescadero Marsh, Pillar Point Marsh (as delineated on Map 7. 1), marshy areas at Tunitas Creek, San Gregorio Creek, Pomponio Creek and Gazos Creek, and any other wetland meeting the definition in Policy 7. 14.
- b. At the time a development application is submitted, consider modifying the boundary of Pillar Point Marsh (as delineated on Map 7. 1) if a report by a qualified professional, selected jointly by the County and the applicant, can demonstrate that land within the boundary does not meet the definition of a wetland.

### **7. 16 Permitted Uses in Wetlands**

Within wetlands, permit only the following uses: (1) nature education and research, (2) hunting, (3) fishing, (4) fish and wildlife management, (5) mosquito abatement through water management and biological controls; however, when determined to be ineffective, allow chemical controls which will not have a significant impact, (6) diking, dredging, and filling only as it serves to maintain existing dikes and an open channel at Pescadero Marsh, where such activity is necessary for the protection of pre-existing dwellings from flooding, or where such activity will enhance or restore the biological productivity of the marsh, (7) diking, dredging, and filling in any other wetland only if such activity serves to restore or enhance the biological productivity of the wetland, (8) dredging manmade reservoirs for agricultural water supply where wetlands may have formed, providing spoil disposal is planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation, and (9) incidental public service purposes, including, but not limited to, burying cables and pipes

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or inspection of piers and maintenance of existing intake and outfall lines.

### **7. 18 Establishment of Buffer Zones**

Buffer zones shall extend a minimum of 100 feet landward from the outermost line of wetland vegetation. This setback may be reduced to no less than 50 feet only where (1) no alternative development site or design is possible; and (2) adequacy of the alternative setback to protect wetland resources is conclusively demonstrated by a professional biologist to the satisfaction of the County and the State Department of Fish and Game. A larger setback shall be required as necessary to maintain the functional capacity of the wetland ecosystem.

## **SEA CLIFFS**

### **7. 30 Permitted Uses**

- a. Where nesting or roosting exists, permit only education and research activities.
- b. Where nesting or roosting does not exist, permit only the following uses: (1) education and research, (2) limited foot paths, (3) limited recreational rock climbing, (4) road and underground utility construction where no feasible alternative exists, and (5) intake or outfall lines provided that the habitat is not threatened.

### **7. 32 Designation of Habitats of Rare and Endangered Species**

Designate habitats of rare and endangered species to include, but not be limited to, those areas defined on the Sensitive Habitats Map for the Coastal Zone.

### **7. 34 Permit Conditions**

In addition to the conditions set forth in Policy 7. 5, require, prior to permit issuance, that a qualified biologist prepare a report which defines the requirements of rare and endangered organisms. At minimum, require the report to discuss: (1) animal food, water, nesting or denning sites and reproduction, predation and migration requirements, (2) plants life histories and soils, climate and geographic requirements, (3) a map depicting the locations of plants or animals and/or their habitats, (4) any development must not impact the functional capacity of the habitat, and (5) recommend mitigation if development is permitted within or adjacent to identified habitats.

## **8. 4 Cliffs and Bluffs**

- a. Prohibit development on bluff faces except public access stairways where

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deemed necessary and erosion control structures which are in conformity with coastal policies on access and erosion.

b. Set back bluff top development and landscaping from the bluff edge (i. e. , decks, patios, structures, trees, shrubs, etc. ) sufficiently far to ensure it is not visually obtrusive when viewed from the shoreline except in highly developed areas where adjoining development is nearer the bluff edge, or in special cases where a public facility is required to serve the public safety, health, and welfare.

### **8. 5 Location of Development**

a. Require that new development be located on a portion of a parcel where the development (1) is least visible from State and County Scenic Roads, (2) is least likely to significantly impact views from public viewpoints, and (3) is consistent with all other LCP requirements, best preserves the visual and open space qualities of the parcel overall. Where conflicts in complying with this requirement occur, resolve them in a manner which on balance most protects significant coastal resources on the parcel, consistent with Coastal Act Section 30007. 5.

Public viewpoints include, but are not limited to, coastal roads, roadside rests and vista points, recreation areas, trails, coastal accessways, and beaches.

This provision does not apply to enlargement of existing structures, provided that the size of the structure after enlargement does not exceed 150% of the pre-existing floor area, or 2,000 sq. ft. , whichever is greater. This provision does not apply to agricultural development to the extent that application of the provision would impair any agricultural use or operation on the parcel. In such cases, agricultural development shall use appropriate building materials, colors, landscaping and screening to eliminate or minimize the visual impact of the development.

b. Require, including by clustering if necessary, that new parcels have building sites that are not visible from State and County Scenic Roads and will not significantly impact views from other public viewpoints. If the entire property being subdivided is visible from State and County Scenic Roads or other public viewpoints, then require that new parcels have building sites that minimize visibility from those roads and other public viewpoints.

**8. 6 Streams, Wetlands, and Estuaries**

- a. Set back development from the edge of streams and other natural waterways a sufficient distance to preserve the visual character of the waterway.
- b. Prohibit structural development which will adversely affect the visual quality of perennial streams and associated riparian habitat, except for those permitted by Sensitive Habitats Component Policies.
- c. Retain the open natural visual appearance of estuaries and their surrounding beaches.
- d. Retain wetlands intact except for public accessways designed to respect the visual and ecological fragility of the area and adjacent land.

**8. 9 Trees**

- a. Locate and design new development to minimize tree removal.
- b. Employ the regulations of the Significant Tree Ordinance to protect significant trees (38 inches or more in circumference) which are located in urban areas zoned Design Review (DR).
- c. Employ the regulations of the Heritage Tree Ordinance to protect unique trees which meet specific size and locational requirements.
- d. Protect trees specifically selected for their visual prominence and their important scenic or scientific qualities.
- e. Prohibit the removal of trees in scenic corridors except by selective harvesting which protects the existing visual resource from harmful impacts or by other cutting methods necessary for development approved in compliance with LCP policies and for opening up the display of important views from public places, i. e. , vista points, roadways, trails, etc.
- f. Prohibit the removal of living trees in the Coastal Zone with a trunk circumference of more than 55 inches measured 4 1/2 feet above the average surface of the ground, except as may be permitted for development under the regulations of the LCP, or permitted under the Timber Harvesting Ordinance, or for reason of danger to life or property.
- g. Allow the removal of trees which are a threat to public health, safety, and welfare.

**8. 10 Vegetative Cover**



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(with the exception of crops grown for commercial purposes)

Replace vegetation removed during construction with plant materials (trees, shrubs, ground cover) which are compatible with surrounding vegetation and is suitable to the climate, soil, and ecological characteristics of the area.

### **8. 16 Landscaping**

- a. Use plant materials to integrate the manmade and natural environments and to soften the visual impact of new development.
- b. Protect existing desirable vegetation. Encourage, where feasible, that new planting be common to the area.

### **\*8. 17 Alteration of Landforms; Roads and Grading**

- a. Require that development be located and designed to conform with, rather than change landforms. Minimize the alteration of landforms as a consequence of grading, cutting, excavating, filling or other development.
- b. To the degree possible, ensure restoration of pre-existing topographic contours after any alteration by development, except to the extent necessary to comply with the requirements of Policy 8. 18.
- c. Control development to avoid the need to construct access roads visible from State and County Scenic Roads. Existing private roads shall be shared wherever possible. New access roads may be permitted only where it is demonstrated that use of existing roads is physically or legally impossible or unsafe. New roads shall be (1) located and designed to minimize visibility from State and County Scenic Roads and (2) built to fit the natural topography and to minimize alteration of existing landforms and natural characteristics.

This provision does not apply to agricultural development to the extent that application of the provision would impair any agricultural use or operation, or convert agricultural soils. In such cases, build new access roads to minimize alteration of existing landforms and natural characteristics.

### **8. 18 Development Design**

- a. Require that development (1) blend with and be subordinate to the environment and the character of the area where located, and (2) be as unobtrusive as possible and not detract from the natural, open space or visual qualities of the area, including but not limited to siting, design, layout, size, height, shape, materials, colors, access and landscaping. The colors of exterior materials shall harmonize with the predominant earth

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and vegetative colors of the site. Materials and colors shall absorb light and minimize reflection. Exterior lighting shall be limited to the minimum necessary for safety. All lighting, exterior and interior, must be placed, designed and shielded so as to confine direct rays to the parcel where the lighting is located.

Except for the requirement to minimize reflection, agricultural development shall be exempt from this provision. Greenhouse development shall be designed to minimize visual obtrusiveness and avoid detracting from the natural characteristics of the site.

- b. Require screening to minimize the visibility of development from scenic roads and other public viewpoints. Screening shall be by vegetation or other materials which are native to the area or blend with the natural environment and character of the site.
- c. Require that all non-agricultural development minimize noise, light, dust, odors and other interference with persons and property off the development site.

### **8. 23 Utilities in County Scenic Corridors**

- a. Install new distribution lines underground, except as provided in b.
- b. For all development, exceptions may be approved by the Planning Commission when: (1) it is not physically practicable due to topographic features, (2) there are agricultural land use conflicts or (3) development is for farm labor housing. In addition, for building permits, exceptions may be approved by the Planning Commission for financial hardships. In each case, however, utilities shall not be substantially visible from any public road or developed public trail.

### **8. 31 Regulation of Scenic Corridors in Rural Areas**

- a. Apply the policies of the Scenic Road Element of the County General Plan.
- b. Apply Section 6325. 1 (Primary Scenic Resources Areas Criteria) of the Resource Management (RM) Zoning District as specific regulations protecting scenic corridors in the Coastal Zone.
- c. Apply the Rural Design Policies of the LCP.
- d. Apply the Policies for Landforms and Vegetative Forms of the LCP.
- e. Require a minimum setback of 100 feet from the right-of-way line, and greater where possible; however, permit a 50-foot setback when sufficient

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screening is provided to shield the structure from public view.

f. Continue applying special regulations for the Skyline Boulevard and Cabrillo Highway State Scenic Corridors.

g. Enforce specific regulations of the Timber Harvest Ordinance which prohibits the removal of more than 50% of timber volume in scenic corridors.

### **9.3 Regulation of Geologic Hazard Areas**

Apply the following regulations of the Resource Management (RM) Zoning Ordinance to designated geologic hazard areas:

a. Section 6324. 6 - Hazards to Public Safety Criteria.

b. Section 6326. 2 - Tsunami Inundation Area Criteria.

c. Section 6326. 3 - Seismic Fault/Fracture Area Criteria. Require geologic reports prepared by a certified engineering geologist consistent with "Guidelines for Geologic/Seismic Reports" (CDMG Notes #37) for all proposed development.

d. Section 6326. 4 - Slope Instability Area Criteria.

### **10.1 Permit Conditions for Shoreline Access**

Require some provision for shoreline access as a condition of granting development permits for any public or private development permits (except as exempted by Policy 10. 2) between the sea and the nearest road. The type of provision, the location of the access and the amount and type of improvements required shall be consistent with the policies of this component.

### **10.9 Public Safety**

a. Provide safe access to the following shoreline destinations which are large enough to accommodate public safety improvements and public use: (1) beaches which are large enough to provide space for easy retreat from normal tidal action, (2) bluffs which are large enough and of a physical character to accommodate safety improvements and which provide room for public use as a vista point, and (3) beaches and bluffs designated appropriate for public use in the Site Specific Recommendations for Shoreline Destinations (Table 10. 6).

b. Discourage public use of access trails which are hazardous because safety improvements have not been provided or cannot be built due to

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physical limitations. Specifically,

(1) Close undeveloped trails which are hazardous when an alternative safe existing or potential access is available for the same beach or bluff.

(2) When no safe access alternative is available, close undeveloped hazardous trails identified in Tables 10. 1 and 10. 2 as having a "high" rating in the public safety hazards category and which pose a risk of serious bodily harm because of the height or unstable nature of bluffs or the limited beach area between the mean high tide line and the base of the bluff. Give priority to the acquisition and improvement of nearby access or for the improvement and re-opening of accesses closed for safety reasons to those trails which lead to long sandy beaches as indicated on Table 10. 1.

(3) Where a trail to the beach is closed, provide a bluff top access point or trail for public viewing, of the shoreline when consistent with Policy 10. 9(a).

(4) Prohibit development that would prevent the future improvement of unsafe access.

### **10. 19 Maintenance**

Eliminate debris, provide trash cans and keep trails safe for public use in new or improved public areas.

### **10. 21 Access for the Disabled**

In all areas where topography permits, provide shoreline access for the disabled by building paths and ramps for wheelchairs without altering major landforms. Refer to the Site Specific Recommendations for Shoreline Destinations (Table 10. 6) for a listing of existing access trails which should be made wheelchair accessible.

### **10. 22 Parking**

a. Continue the use of existing official off-street parking facilities for shoreline access areas in order to maintain existing parking levels and to confine negative impacts to areas already disturbed.

b. Minimize the negative impacts of existing official off-street parking facilities. Specifically,

(1) Require the landscaping of existing facilities which are visible from

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public roads, vista points or recreation areas without blocking ocean views from these areas.

(2) Remove or relocate parking spaces in existing facilities which are located in or near sensitive habitats to provide adequate buffering. In no cases, however, eliminate an entire existing parking facility without relocation.

c. Use the following criteria when developing or relocating new off-street parking facilities for shoreline access areas:

(1) Base the amount of parking on the level of public use appropriate for a site's size, environmental sensitivity, and amount of land suitable for parking.

(2) Give preference to sites which are now used informally for shoreline access parking. However, do not establish the following as permanent sites for parking: (a) emergency pullouts needed for highway safety, (b) visually prominent sites where landscaping would not significantly screen the parking from view, (c) visually prominent sites where landscape screening would block ocean views, and (d) sites in or adjacent to sensitive habitats.

(3) Locate new parking facilities on sites where it is possible to blend them into the landscape or screen them by topography or vegetation.

(4) Prohibit the development of sandy beaches.

(5) Prohibit the conversion of prime agricultural lands, except where such conversion is consistent with Policies 5. 8 to 5. 11 of the Agriculture Component. In such cases, locate facilities at the edges of fields, separated by fences or other facilities to protect agricultural operations.

d. New commercial or industrial parking facilities of ten or more spaces within 1/4 mile radius of an established shoreline access area shall designate and post 20% of the total spaces for beach user parking between 10:00 a. m. and 4:00 p. m.

e. Provide trails linking parking facilities to nearby shoreline destinations that do not have existing parking facilities because such facilities would be inconsistent with other parking policies.

f. Reserve parking spaces for the disabled at the trailheads of wheelchair accessible paths and ramps and at other level sites with safe access.

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- g. Provide bus and secure bicycle parking in parking facilities.

### **10. 30 Requirement of Minimum Access as a Condition of Granting Development Permits**

- a. Require the provision of shoreline access for any private or public development between the sea and the nearest public road.
- b. Base the level of improvement and development of access support facilities at a site on the Locational Criteria and Development Standards Policies and the Site Specific Recommendations contained in Table 10. 6.
- c. Base the responsibility and requirements of the property owner for the provision of this access on: (1) the size and type of development, (2) the benefit to the developer, (3) the priority given to the type of development under the Coastal Act and (4) the impact of the development, particularly the burden the proposed development would place on the public right of access to and use of the shoreline. Determine the minimum requirements according to the following:

(1) For small non-agricultural developments (i. e. , construction of nonresidential structures 500 sq. ft. and smaller, fences, wells, placement of utility poles), require the retention of existing public access as defined in Policies 10. 5 and 10. 6, the posting of hazardous and environmentally sensitive areas, and pay an in-lieu fee of a minimal sum not to exceed 5% of the project cost to contribute to the provision of public access elsewhere along the County shoreline.

(2) For small to medium developments (i. e. , single-family residences, all minor land divisions, barns over 5,000 sq. ft. , small greenhouses), not specifically exempted from shoreline access requirements by Policy 10. 2, require the offering or granting of a vertical and/or lateral access consistent with the policies of this component, to either a public agency or private group acceptable to the County for improvement and maintenance.

(3) For large agricultural and non-agricultural developments (i. e. , developments of more than one single-family house, major subdivisions, commercial and industrial developments, and large greenhouses and agricultural processing plants), require the property owner to provide, improve, and maintain shoreline access consistent with the policies of this component.

### **11. 4 Recreation and Visitor-Serving Facilities Permitted in the Coastal Zone**

Permit the following facilities in the Coastal Zone: (1) necessary visitor-serving

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facilities as defined in Policy 11. 1, and (2) commercial recreation and public recreation facilities which (a) are designed to enhance public opportunities for coastal recreation, (b) do not substantially alter the natural environment, and (c) do not subvert the unique small town, rural character of the individual communities on the Coastside.

### **11. 12 Sensitive Habitats**

- a. Permit recreation and visitor-serving facilities to locate on lands adjacent to sensitive habitats only when (1) there is adequate distance or separation by barriers such as fences, (2) the habitat is not threatened, and (3) there would not be substantial impacts on habitat, topography, and water resources.
- b. Permit recreation or visitor-serving facilities to locate adjacent to sensitive habitats only when development standards and management practices are adequate to protect the resources, consistent with Policy 11. 18 and the Sensitive Habitats Component.
- c. Discourage the expansion of public recreation into locations within or adjacent to sensitive habitats until the level of improvement and management of existing public recreation areas within or adjacent to sensitive habitats are consistent with the Sensitive Habitats Component.

### **11. 16 Posting**

- a. Require, as a condition of recreational or highway development in the vicinity, the placement of signs on major roads near major public and commercial recreation areas to inform visitors of available services, recreation facilities and distances to the next service or facility.
- b. Design these signs to be similar in style and materials to the signs for shoreline access.

### **11. 20 Utilities**

- a. Require that sites for permitted recreation or visitor-serving facilities have or develop access to a public road in conformance with the policies of the Sensitive Habitats, Scenic Resources, and Hazards Components.
- b. Encourage sites for recreation or visitor-serving facilities to develop public restrooms, drinking water and telephones.
- c. Require recreation and visitor-serving facilities to connect to public or community water and sewer systems wherever those exist.

